

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the
District of Columbia

APRIL TERM, 1939.

No. 7444

SPECIAL CALENDAR

492

KARL F. JORSS, EXECUTOR OF THE ESTATE OF
AMANDUS F. JORSS, DECEASED, APPELLANT,

vs.

JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY A.
REARICK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED JUNE 20, 1939

PRINTED AUGUST 11, 1939

United States Court of Appeals for the District of Columbia

APRIL TERM, 1939.

No. 7444

KARL F. JORSS, EXECUTOR OF THE ESTATE OF
AMANDUS F. JORSS, DECEASED, APPELLANT,

vs.

JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY A.
REARICK, ANNA V. LIVINGSTON, PARK SAV-
INGS BANK, A CORPORATION, JOHN F. MORAN,
RECEIVER FOR PARK SAVINGS BANK, ET AL.,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

A. District Court of the United States for the
District of Columbia

Equity No. 55,933

JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY A. REARICK,
ANNA V. LIVINGSTONE, JOHN F. MORAN, Receiver of
PARK SAVINGS BANK, appointed by Comptroller of the
Currency, *Plaintiffs*,

vs.

PARK SAVINGS BANK, Incorporated under the laws of the
State of Alabama, and others, *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

1 In the Supreme Court of the District of Columbia

Holding an Equity Court

Equity No. 55,933.

JOSEPH W. THOMPSON, 3155 19th Street, N. W., MARY E.
ALLAN, 3360 16th Street, N. W., HARRY A. REARICK,
1855 Calvert Street, N. W., ANNA V. LIVINGSTONE, 1249
Kenyon Street, N. W., all of Washington, D. C.,
Plaintiffs,

vs.

PARK SAVINGS BANK, Incorporated under the laws of the
State of Alabama, 14th and Kenyon Streets, N. W.,
JOHN F. MORAN, Receiver, Appointed by the Comptrol-
ler of the Currency, 14th and Kenyon Streets, N. W.,

JOHN F. T. O'CONNOR, Comptroller of the Currency, Treasury Department, RECONSTRUCTION FINANCE CORPORATION, a corporation created under a special Act of Congress of the United States, 1825 H Street, N. W., FRANK E. ALTEMUS, 3232 Ellicott Street, N. W., WADE H. ATKINSON, 1402 M Street, N. W., CHARLES W. BOLLIGIANO, 607 E Street, N. W., L. T. BREUNINGER, 1511 K Street, N. W., JOSEPH W. COX, 1850 Monroe Street, N. W., H. F. DISMER, 3124 14th Street, N. W., PETER M. DORSCH, 641 S Street, N. W., G. W. FORSBERG, c/o Terminal Refrigerating & Warehousing Corporation, 8th and Water Street, N. W., J. O. GHEEN, c/o Shoreham Saddle Club, 24th and Calvert Streets, N. W., E. T. GOODMAN, 83 Arcade Market, JOHN H. HOLMEAD, 3583 13th Street, N. W., C. F. JENKINS, 5502 16th Street, N. W., A. F. JORSS, 1220 24th Street, N. W., E. S. KENNEDY, 2331 Cathedral Avenue, N. W., N. MOUNTFORD, 3104 14th Street, N. W., C. M. MURRAY, 2901 16th Street, N. W., Apt. 33, CLAUDE W. OWEN, 2321 4th Street, N. E., ROBERT L. W. OWENS, 6323 Georgia Avenue, N. W., NORMAN O. OYSTER, 3316 14th Street, N. W., H. A. POLKINHORN, 1801 Eye Street, N. W., Room 512, GEORGE A. PREVOST, 1346 F Street, N. W., MAURICE SCHLOSBERG, 3112 14th Street, N. W., J. ROBERT SOMMERVILLE, 1735 14th Street, N. W., Room 111, WARREN W. SPENCER, 1350 Jonquil Street, N. W., W. M. WAILLES, 1514 Allison Street, N. W., GEORGE E. WALKER, 7th and K Street, S. W., GEORGE W. WHITE, 613 15th Street, N. W., C. C. WINEBERGER, 1323 Ingraham Street, N. W., (all of Washington, D. C.,) WILLIAM B. TODD, Address Unknown, As Directors and Liquidating Trustees of the Park Savings Bank, and as individuals trading under the firm name and style of Park Savings Bank, EUGENE CASEY, 1425 Whittier Street, N. W., ELMER H. ROBERTS, 3319 Holmead Place, N. W., HARRY W. KEEFE, 3607 10th Street, N. W., (all of Washington, D. C.,) On account of all others interested, individually and as stockholders of Park Savings Bank,

Defendants.

Memorandum

November 25 1933

Amended Bill of Complaint filed.

4 *Amended Decree Dismissing Amended and*
Cross Bills

Filed January 3-1936

It appearing that certain changes were inadvertently made in the decree entered herein December 9, 1935, after said decree had been signed by the Court, it is now this 3rd day of January, 1936.

Adjudged, Ordered, and Decreed, that the decree of December 9, 1935, be and the same is hereby amended nunc pro tunc by striking therefrom the aforesaid changes, so that the decree as amended shall read as follows:

This cause coming on to be further heard upon the amended and cross bills filed herein, the answers thereto, and the testimony taken in open court, and it appearing to the Court that the decree heretofore entered in this cause on the 28th day of June, 1934, dismissing the amended and cross bills as to depositors of the Park Savings Bank who became such after August 30, 1929, was on appeal affirmed by the United States Court of Appeals for the District of Columbia, and after argument by counsel for the respective parties, it is by the Court this 9th day of December, 1935.

Adjudged, Ordered, and Decreed, that the amended bill of complaint and cross bill filed herein, insofar as said bills seek to hold the defendants herein liable to depositors of the defendant bank who were such on August 30, 1929, and continued to be such until the closing of the bank on March 6, 1933, be, and each of said bills is hereby dismissed, with costs to the defendants to be taxed by the clerk.

5 All proceedings heretofore had in connection with
the appeals taken by the plaintiffs shall apply to
the decree as amended.

ALFRED A. WHEAT
Chief Justice.

From the foregoing decree the plaintiffs and cross plaintiffs in open court note an appeal to the United States Court of Appeals for the District of Columbia, and the security on appeal is fixed at One Hundred Dollars (\$100.00) cost bond or a deposit of Fifty Dollars (\$50.00) in cash.

ALFRED A. WHEAT—
C. J.

Scire Facias

Issued January 24 1939

* * *

The President of the United States to

Karl F. Jorss, 1224-24th Street, N. W.
Res. 2626-31st Street, N. W.,
Washington, D. C.

Executor of the Estate of Amandus F. Jorss,
deceased.

Greeting:

The death of defendant, Amandus F. Jorss, on or about March 15, 1937, having been suggested by the plaintiffs and co-plaintiff on January 24th, 1939, you are hereby commanded to be and appear in this Court on or before the twentieth day, exclusive of Sundays and Legal Holidays, after service hereof upon you and be made a party defendant in this cause in the place and stead of said Amandus F. Jorss, deceased.

Witness the Honorable Chief Justice of said Court this 24th day of January, A. D. 1939.

CHARLES E. STEWART,
Clerk

(Seal)

By SOPHIE LYMAN
Asst. Clerk

Marshal's Return

Personally served a copy of within on within named Karl F. Jorss, on Jan. 28, 1939.

JOHN B. COLPOYS,
U. S. Marshal in and for the D. of C.

By E. A. CARUSI
Deputy U. S. Marshal.
O.

7

Motion to Quash Scire Facias

Filed Feb 20 1939

*

*

*

Karl F. Jorss, Executor of the estate of Amandus F. Jorss, deceased, appearing specially for the purpose of this motion and none other, moves the Court to quash the scire facias issued herein January 24th., 1939, commanding him to appear and be made a party defendant in the above entitled cause, and for grounds of the motion says:

1. That Amandus F. Jorss, one of the defendants named in the above entitled cause died on the 15th., day of March, 1937, and on April 16th, 1937, Karl F. Jorss was appointed and qualified as Executor of the estate of said decedent.

2. That prior to the date of the death of the decedent, the defendants in this cause had filed a motion to dismiss the bill, and on June 28, 1934, a decree granted the motion to dismiss as to those depositors of the Park Savings Bank who opened their accounts after August 30, 1929. From this decree, an appeal was prosecuted by the plaintiff Thompson, and the Receiver of the bank was allowed a special appeal. This appeal was designated as No., 6328, and the only question there presented was as to the rights of depositors who became such after August 30, 1939. The decision of the Court of Appeals, announced April 29, 1935, was favorable to the appellees.

3. Thereafter, the branch of the case having to do with the rights of depositors whose accounts with the Park Savings Bank were opened prior to August 30, 1929, came on for trial in this Court, and after hearing, a decree entered December 9, 1935, dismissed the bill. From that decree an appeal was prosecuted to the Court of Appeals, there known as No., 6635, and while said appeal was pending and before the same came on for argument, the decedent, Amandus F. Jorss, on the 15th., day of March, 1937, died, and on March 7th., 1938, the Court of Appeals reversed this Court, and remanded the case to this Court with instructions as follows:

8 "The case will, therefore, be remanded to the lower Court with instructions to set aside the former decree and refer the case to an Auditor for an accounting to determine which depositors of the bank as of August 30, 1929,

continued as such and to determine what part of their deposits as of that day remained in the bank during the ensuing period”.

4. That in the case No., 6635 Court of Appeals, process or summons has never at all, in any manner, been served upon the personal representative of decedent's estate to be substituted as a party defendant, nor has he at any time waived service of summons or voluntarily entered his appearance in the Court of Appeals or in this Court, nor has he ever authorized any attorney to appear for him in any manner whatsoever in case No., 6635 in the Court of Appeals.

5. That on June 19, 1937, in case No., 6635 in the Court of Appeals, a suggestion of death, giving the name of the personal representative of the decedent, and a motion to substitute him as a party was filed by counsel for the appellants, a copy of such suggestion and motion was served upon counsel for the surviving appellees, the personal representative of the decedent's estate did not voluntarily become a party, no service of the suggestion of death and motion for substitution was ever made upon the personal representative or upon any one in his behalf; and no order was obtained requiring him to become a party, as provided by Rule 9 of the Court of Appeals, and no valid order was ever entered substituting the personal representative of decedent's estate.

6. It thus appears, that at the time of the death of Amandus F. Jorss, the bill filed in this cause stood as dismissed in this Court and that the personal representative of the decedent was never brought within the jurisdiction of either Court.

7. The decedent, Amandus F. Jorss, died while the case was pending in the Court of Appeals, nine months before the same came on for hearing and a year before the Court of Appeals rendered its decision. The Court of Appeals never having acquired jurisdiction of the personal representative of the decedent's estate, any order or decree entered by the Court of Appeals attempting to bind a dead man or to bind the personal representative of the deceased is a nullity.

It is respectfully submitted that the action has abated as to him and the process issued herein should be quashed.

HARRY A. L. BARKER

Attorney for the Executor appearing herein specially for the purpose of this motion and none other.

Affidavit

DISTRICT OF COLUMBIA, ss:

Joseph T. Sherier, being first duly sworn, deposes and says:

He is a member of the Bar of the District of Columbia and one of the attorneys of record for the defendants in the cause of Thompson, et al., vs. Park Savings Bank, et al., Equity No. 55,933 in the District Court of the United States for the District of Columbia, and No. 6635 in the United States Court of Appeals for the District of Columbia; that

10 Amandus F. Jorss was named as one of the defendants and appellees in the above cause, and he is informed said Amandus F. Jorss died on the 15th day of March, 1937, at which time the above cause was pending in the Court of Appeals.

Affiant says that he was never retained to represent Karl F. Jorss, personal representative of the decedent's estate in Equity Cause 55,933 in the District Court, nor in the cause known as No. 6635 in the Court of Appeals; that he did not meet Karl F. Jorss until the month of December, 1938, at which time he was introduced to him in connection with the causes known as Equity No. 57,416 and Equity No. 57,354, pending in the District Court.

JOSEPH T. SHERIER

Subscribed and sworn to before me this 18th day of February, 1939.

MELVILLE B. COX

Notary Public, D. C.

(Seal)

11 *Points and Authorities in Opposition to Motion
to Quash Scire Facias*

Filed February 27 1939

* * *

I

The suggestion of death of the decedent filed herein on January 4, 1939, was immediately followed by the issuance of a scire facias and the delivery thereof to the Marshal for service, all of which was in strict conformity with the District of Columbia Code (1925) Sections 243-246 inclusive, which impose no time limitation upon proceedings for substitution, and Section 243 expressly providing that "no suit in equity shall abate by the death of any of the parties in cases where the rights involved in the suit survive". It follows, therefore, that the present motion to quash should be denied because it was made in strict conformity with the aforesaid Code Sections controlling procedure of this character independently of the new Federal Rules of Civil Procedure effective September 16, 1938.

II

The real purpose of the motion to quash appearing upon the face thereof, is to have this Court either ignore or declare a nullity the action of the Court of Appeals in this cause No. 6635 in said court in granting an order following suggestion of death of Amandus F. Jorss accompanied by a prayer for substitution, directing the substitution of Karl F. Jorss as executor of Amandus F. Jorss. This order was passed by the Court of Appeals on June 21, 1937 and no attack has been made upon the regularity of said entry in that court up to this time, notwithstanding certain important proceedings were had in the Court of Appeals following the entry of said order as will appear from the docket entries of said court:

1937

September 7 Case restored to calendar for rehearing.

12 December 7

December 8 Reargument

1938

March 7	Case reversed
March 24	Petition for rehearing
March 24	Motion to stay mandate
April 5	Opposition to rehearing
April 14	Rehearing denied
April 22	Stay of mandate granted
October 15	Certified copy of order of Supreme Court United States denying certiorari
October 17	Mandate issued

It thus appears that five terms of the Court of Appeals have elapsed since the entry of the order of substitution.

Nothing is better settled than that any mandate or order of the Court of Appeals will have to be carried out strictly by the lower Court upon the coming down of the mandate, and that the lower court may not perform any function except to execute the mandate. *Gaines v. Rugg*, 148 U. S. 228; 37 L. ed. 432.

In the case of *Sanford Fork & Tool Co.*, 160 U. S. 247; 40 L. ed. 414, the Court used the following language:

“When a case has been once decided by this court on appeal and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.”

It follows that if any attack is to be made upon the regularity of any order entered in this cause on appeal, the application must have been seasonably addressed to the Court of Appeals where the alleged irregularity occurred.

13

III

It also appears that Joseph T. Sherier of counsel for the appellees in the Court of Appeals at the time of the entry of said order of substitution, consented in writing to

the filing of said motion to substitute and now appears as one of counsel for the executor of the decedent herein. It may, therefore, be assumed that the attorney concerned has been employed in the instant motion because of his entire acquaintance with the history of this litigation which began in 1933 and one authority, at least, *Haas v. Sternbach*, 156 Ill. 44 has thus characterized a similar situation "He performed not merely ministerial duties, but used his professional skill and discretion in their behalf. To allow them the full benefit of his services, and at the same time relieve them from the legal effect of notice to him of the existence of the instrument he was seeking, in their interests to defeat, would be unjust, and in our opinion contrary to authority."

IV

It is also respectfully submitted that the executor herein has come into this cause voluntarily through one of his present counsel, to-wit, Harry A. L. Barker, because of the following entries on several motions filed herein;

1. On November 14, 1938 said Barker acknowledged service of a copy of the motion to enter a decree on mandate filed November 29, 1938, the acknowledgment reading as follows:

"HARRY A. L. BARKER
*Attorney for the defendant A. F.
Jorss estate.*"

2. On December 2, 1938, said Barker acknowledged service of a copy of the motion to substitute the executors of the estate of Charles W. Bolgiano filed December 5, 1938, said acknowledgment reading as follows:

"HARRY A. L. BARKER
for estate of A. F. Jorss, deceased."

3. On December 28, 1938, the said Barker acknowledged service of a copy of the motion to substitute the administrator of Frank E. Altemus, deceased, filed on December 29, 1938, said acknowledgment being in the following language:

"HARRY A. L. BARKER,
Atty. for estate of A. F. Jorss".

4. On January 5, 1939, said Barker acknowledged service of a copy of the motion to substitute the executors of the deceased defendant, George W. White as follows:

“HARRY A. L. BARKER,
Atty. for estate of A. F. Jorss”.

The effect, therefore, of these acknowledgments of service, particularly the one in which said Barker describes himself as attorney for the defendant, A. F. Jorss, estate, is to constitute a voluntary, deliberate and general entry of appearance by and on behalf of the executor of said estate.

It is, therefore, respectfully submitted that the motion to quash should be denied on any one of the several grounds urged in opposition to the granting of said motion.

E. HILTON JACKSON
WILLIAM E. RICHARDSON
Attorneys for Plaintiffs

J. BRUCE KREMER
HERBERT M. BINGHAM
BRUCE A. LOW
H. DONALD KISTLER,
*Attorneys for cross-plaintiff,
John F. Moran, Receiver*

15 *Affidavit in Support of Motion to Quash Scire
Facias*

Filed March 6- 1939

*

*

*

DISTRICT OF COLUMBIA, ss:

Karl F. Jorss being first duly sworn, on oath, deposes and says; that on the 16th. day of April, 1937, he was appointed and qualified as executor of the estate of Amandus F. Jorss, deceased, as will appear in administration cause numbered 51,596 in the Probate Court for the District of Columbia.

That he has been out of the City for several weeks and did not return to the City until Friday, March 3rd., 1939.

That up to January 28, 1939, no process or summons had ever been served upon him to be made a party in the cause of Joseph W. Thompson, et al., vs. Park Savings Bank, et al., Equity cause numbered 55,933, nor has he at any time waived service of process or summons or voluntarily entered his appearance in said Equity cause 55,933, nor had he ever authorized or employed any attorney to appear for him in the aforesaid Equity cause 55,933, until January 28th., 1939, and then only to appear specially for the purposes of the motion to quash the scire facias issued January 24th., 1939.

That he never employed Joseph T. Sherier, Esq., or Otis B. Kent, Esq., or any other attorney to represent him in the aforesaid Thompson case in the Court of Appeals, there known as number 6635 and in fact he did not meet Mr. Sherier until sometime in the month of December, 1938, and although he has heard of Otis B. Kent, he has never met him.

That affiant did not employ, retain or engage the services of Harry A. L. Barker, Esq., to represent him in the Thompson case, Equity number 55,933 until after he had been served with the aforesaid process issued January 24th., 1939, commanding him to appear and be made
16 a party in that cause in place and stead of Amandus F. Jorss, deceased.

That on, to wit, June 16th., 1937, service was had upon him in the case of John F. Moran, Receiver of the Park Savings Bank vs Frank E. Altemus, et al., Equity cause No. 57,416 in which cause Amandus F. Jorss was named as one of the defendants, and the case of John F. Moran, Receiver of the Park Savings Bank, vs Frank E. Altemus et al, Equity No. 57,354 in which case Amandus F. Jorss was named as one of the defendants, that he employed Harry A. L. Barker, Esq., to represent him in the said Equity causes 57,416 and 57,354, that the plaintiff in said Equity causes 57,416 and 57,354 filed claims \$4,122,789.84 and \$2,-670.00 in the Probate Court against the estate of Amandus F. Jorss, deceased, no claim has been filed by the plaintiffs in the Thompson case, Equity 55,933 in the Probate Court against the estate of Amandus F. Jorss, deceased.

Affiant says he had no information or knowledge that Harry A. L. Barker had signed any papers whatsoever in

the Thompson case Equity 55,933, as attorney for defendant A. F. Jorss estate or as attorney for the estate of A. F. Jorss, deceased until Saturday, March 4th., 1939, and says that he never authorized the said Harry A. L. Barker to sign any papers in the Thompson case Equity 55,933, nor was said Harry A. L. Barker employed by him in the Thompson case Equity 55,933 until after the service the aforesaid process upon him, January 28, 1939.

KARL F. JORSS

Subscribed and sworn to before me this 6th day of March, 1939.

CHARLES E. STEWART

Clerk

By H B DERTZBAUGH

asst Clerk

17

Affidavit of Harry A. L. Barker

Filed March 6 1939

*

*

*

DISTRICT OF COLUMBIA, ss:

Harry A. L. Barker, being first duly sworn, on oath, deposes and says; that at the time of the closing of the Park Savings Bank, Amandus F. Jorss was one of the directors of said bank, and was named one of the defendants in a number of suits filed in the District Court against the directors of said bank.

That Amandus F. Jorss died on the 15th., day of March, 1937, and Karl F. Jorss was appointed executor of decedents estate.

That in June, 1937 process was served upon Karl F. Jorss, as executor of the estate of Amandus F. Jorss, deceased, to appear and be made a party defendant in the place and stead of Amandus F. Jorss, deceased in two causes of action filed by John F. Moran, Receiver of the Park Savings Bank vs. Frank E. Altemus, et al., being Equity causes 57,354 and 57,416 and affiant was employed by said Karl F. Jorss to represent him in the said Equity causes 57,354 and 57,416 and affiant filed his appearance in the two said equity causes.

That prior to the death of Amandus F. Jorss the case of Thompson et al., vs the Park Savings Bank, et al., Equity No., 55,933 had been tried in the District Court and dismissed, plaintiffs perfected an appeal to the Court of Appeals, there known as No. 6635.

Affiant says he was not authorized or employed by the said Karl F. Jorss to appear in the Court of Appeals case number 6635, nor was he authorized or employed to appear in the Thompson et al., case Equity number 55,933 until

January 28th., 1939, nor did affiant enter his appearance, either general or special in either Court until

February 20, 1939 at which time he appeared specially in the Thompson et al., case Equity number 55,933 for the purposes set forth in the motion filed herein to quash the scire facias issued January 24th., 1939 to Karl F. Jorss to appear and be made a party to said cause in the place and stead of Amandus F. Jorss, deceased.

Affiant says that when he acknowledged service of copy of motion to enter decree on mandate filed November 28, 1938, copy of motion to substitute the executor of the estate of Charles W. Bolgiano, copy of the motion to substitute the administrator of Frank E. Altemus, deceased, and copy of motion to substitute the executors of George W. White estate, he did so inadvertently, as he had no authority from Karl F. Jorss to acknowledge such service or to appear for him in said Thompson et al., case, Equity number 55,933 until January 28, 1939, and then only to appear specially.

HARRY A. L. BARKER

Subscribed and sworn to before me this 6th day of March, 1939.

CHARLES E. STEWART,
Clerk

H B DERTZBAUGH,
Ass't Clerk

19

Order

Filed March 6, 1939

*

*

*

In consideration of the motion of Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, filed herein

on February 20, 1939, to quash scire facias issued herein on January 24, 1939,

It is this sixth day of March, A. D. 1939,

ORDERED, ADJUDGED and DECREED that said motion to quash be, and the same is hereby denied.

By the Court

JENNINGS BAILEY,
Justice.

20 *Order Allowing Special Appeal*

Filed June 3-1939

United States Court of Appeals for the
District of Columbia

No. 3052 Original.

April Term, 1939.

Equity No. 55,933.

KARL F. JORSS, Executor of the Estate of Amandus F. Jorss,
deceased, *Petitioner*,

vs.

JOSEPH W. THOMPSON, ET AL.

On consideration of the Petition for allowance of a Special Appeal from the order of the District Court of the United States for the District of Columbia entered herein on March 6, 1939, by Mr. Justice Jennings Bailey,

It is ordered by the Court that the petition be, and it is hereby, granted and a special appeal allowed as prayed, the case to be set for hearing on the October, 1939, Assignment.

Per Mr. Chief Justice Groner,

May 29, 1939.

A True Copy,

Test: JOSEPH W. STEWART

Clerk, of the United States Court of

Appeals for the District of Columbia

(Seal)

21

Notice of Appeal

Filed June -6 1939

* * *

Notice is hereby given this 6th day of June, 1939, that Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, hereby appeals to the United States Court of Appeals for the District of Columbia from the order of this Court entered on the 6th., day of March, 1939, denying the motion of Karl F. Jorss, filed on the 20th., day of February, 1939, to quash scire facias; and from the order of this Court entered on the 15th., day of March 1939, substituting Karl F. Jorss as executor of the estate of Amandus F. Jorss, deceased, a party defendant.

HARRY A. L. BARKER

*Attorney for Karl F. Jorss,
executor of the estate of
Amandus F. Jorss, deceased.*

J. BRUCE KREMER
HERBERT M. BINGHAM
BRUCE A. LOW
H. DONALD KISTLER

*Atty for John H Moran
Receiver*

E. HILTON JACKSON
WILLIAM E. RICHARDSON
Attorney for plaintiffs.

Memorandum

June 6-1939.

Bond (\$250) of K. F. Jorss on appeal—filed.

22

Statement of Points on Appeal

Filed June 6, 1939.

* * *

Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, for points relied upon on appeal, says:—

1. The Court erred in entering the order of March 6, 1939, denying his motion to quash scire facias issued January 24, 1939, and contends the cause abated as to him and the Court had no jurisdiction as to him.

HARRY A. L. BARKER,
*Attorney for Karl F. Jorss, ex-
ecutor of Estate of Amandus
F. Jorss, deceased.*

Special appeal No. 3052.

23 *Designation of Record*

Filed June 3, 1939

* * *

Comes now Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, by Harry A. L. Barker, his attorney and designates the parts of the record which he desires in the transcript of the record, said parts being considered sufficient for the determination of the questions raised in special appeal, namely:

1. Amended decree dismissing Amended Bill and Cross Bill, signed by Mr. Justice Wheat January 3, 1936.

2. Scire facias filed January 24, 1939, commanding Karl F. Jorss to appear and be made a party defendant in place of Amandus F. Jorss, deceased.

3. Motion to quash scire facias filed by Karl F. Jorss, executor, February 20, 1939.

4. Affidavit of Joseph T. Sherier, filed February 20, 1939.

5. Affidavit of Karl F. Jorss, filed March 6, 1939.

6. Affidavit of Harry A. L. Barker, filed March 6, 1939.

7. Opposition to motion of Karl F. Jorss, executor of estate of Amandus F. Jorss, deceased, filed February 27, 1939.

8. Order denying motion to quash scire facias, signed by Mr. Justice Jennings Bailey, filed March 6, 1939.

HARRY A. L. BARKER
*Attorney for Karl F. Jorss, ex-
ecutor of estate of Amandus
F. Jorss, deceased.*

Special appeal No. 3052

24 Service of copy of the foregoing designation of record hereby acknowledged this 3d day of June 1939.

E. HILTON JACKSON
WM. E. RICHARDSON
Attorneys for plaintiffs.

J. BRUCE KREMER
HERBERT M. BINGHAM
BRUCE A. LOW
H. DONALD KISTLER
*Attorneys for Cross-plaintiff,
John F. Moran, Receiver.*

25 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 55933 in Equity, wherein Joseph W. Thompson, et al., are Plaintiffs and Park Savings Bank, Incorporated under the laws of the State of Alabama, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of June, 1939.

(Seal) C. E. STEWART,
Clerk.

Endorsed on Cover: No. 7444 Jorss, Executor &c., Appellant, vs. Thompson et al. United States Court of Appeals for the District of Columbia Filed Jun 20 1939 Joseph W. Stewart, Clerk.

TRANSCRIPT OF RECORD

United States Court of Appeals for the District of Columbia

APRIL TERM, 1939.

No. 7445

SPECIAL CALENDAR.

**KARL F. JORSS, EXECUTOR OF THE ESTATE OF
AMANDUS F. JORSS, DECEASED, APPELLANT,**

vs.

**JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY
A. REARICK, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.**

FILED JUNE 20, 1939

PRINTED AUGUST 11, 1939

United States Court of Appeals for the District of Columbia

APRIL TERM, 1939.

No. 7445

KARL F. JORSS, EXECUTOR OF THE ESTATE OF
AMANDUS F. JORSS, DECEASED, APPELLANT,

vs.

JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY
A. REARICK, ANNA V. LIVINGSTON, PARK SAV-
INGS BANK, A CORPORATION, JOHN F. MORAN,
RECEIVER FOR PARK SAVINGS BANK, ET AL.,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

A. District Court of the United States for the
District of Columbia

Equity No. 55,933

JOSEPH W. THOMPSON, MARY E. ALLAN, HARRY A. REARICK,
ANNA V. LIVINGSTONE, JOHN F. MORAN, Receiver of
PARK SAVINGS BANK, appointed by Comptroller of the
Currency, *Plaintiffs*,

vs.

PARK SAVINGS BANK, Incorporated under the laws of the
State of Alabama, and others, *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

1 In the Supreme Court of the District of Columbia
Holding an Equity Court

Equity No. 55,933.

JOSEPH W. THOMPSON, 3155 19th Street, N. W., MARY E. ALLAN, 3360 16th Street, N. W., HARRY A. REARICK, 1855 Calvert Street, N. W., ANNA V. LIVINGSTONE, 1249 Kenyon Street, N. W., all of Washington, D. C., *Plaintiffs*,

vs.

PARK SAVINGS BANK, Incorporated under the laws of the State of Alabama, 14th and Kenyon Streets, N. W., JOHN F. MORAN, *Receiver*, Appointed by the Comptroller of the Currency, 14th and Kenyon Streets, N. W., JOHN F. T. O'CONNOR, *Comptroller of the Currency*, Treasury Department, RECONSTRUCTION FINANCE CORPORATION, a corporation created under a special Act of Congress of the United States, 1825 H Street, N. W., FRANK E. ALTEMUS, 3232 Ellicott Street, N. W., WADE H. ATKINSON, 1402 M Street, N. W., CHARLES W. BOLLIGIANO, 607 E Street, N. W., L. T. BREUNINGER, 1511 K Street, N. W., JOSEPH W. COX, 1850 Monroe Street, N. W., H. F. DISMAR, 3124 14th Street, N. W., PETER M. DORSCH, 641 S Street, N. W., G. W. FORSBERG, c/o Terminal Refrigerating & Warehousing Corporation, 8th and Water Street, N. W., J. O. GHEEN, c/o Shoreham Saddle Club, 24th and Calvert Streets, N. W.,
2 E. T. GOODMAN, 83 Arcade Market, JOHN H. HOLMEAD, 3583 13th Street, N. W., C. F. JENKINS, 5502 16th Street, N. W., A. F. JORSS, 1220 24th Street, N. W., E. S. KENNEDY, 2331 Cathedral Avenue, N. W., N. MOUNTFORD, 3104 14th Street, N. W., C. M. MURRAY, 2901 16th Street, N. W., Apt. 33, CLAUDE W. OWEN, 2321 4th Street, N. E., ROBERT L. W. OWENS, 6323 Georgia Avenue, N. W., NORMAN O. OYSTER, 3316 14th Street, N. W., H. A. POLKINHORN, 1801 Eye Street, N. W., Room 512, GEORGE A. PREVOST, 1346 F Street, N. W., MAURICE SCHLOSBERG, 3112 14th Street, N. W., J. ROBERT SOMMERVILLE, 1735 14th Street, N. W., Room 111, WARREN W. SPENCER, 1350 Jonquil Street, N. W., W. M. WAILES, 1514 Allison Street, N. W., GEORGE E.

WALKER, 7th and K Streets, S. W., GEORGE W. WHITE, 613 15th Street, N. W., C. C. WINEBERGER, 1323 Ingraham Street, N. W., (all of Washington, D. C.,)

- 3 WILLIAM B. TODD, Address Unknown, As Directors and Liquidating Trustees of the Park Savings Bank, and as individuals trading under the firm name and style of Park Savings Bank, EUGENE CASEY, 1425 Whittier Street, N. W., ELMER H. ROBERTS, 3319 Holmead Place, N. W., HARRY W. KEEFE, 3607 10th Street, N. W., (all of Washington, D. C.), On account of all others interested individually and as stockholders of Park Savings Bank, *Defendants*.

Memorandum

November 25 1933

Amended Bill of Complaint filed.

- 4 *Amended Decree Dismissing Amended and Cross Bills*

Filed January 3-1936

*

*

*

It appearing that certain changes were inadvertently made in the decree entered herein December 9, 1935, after said decree had been signed by the Court, it is now this 3rd day of January, 1936,

ADJUDGED, ORDERED, and DECREED, that the decree of December 9, 1935, be and the same is hereby amended nunc pro tunc by striking therefrom the aforesaid changes, so that the decree as amended shall read as follows:

This cause coming on to be further heard upon the amended and cross bills filed herein, the answers thereto, and the testimony taken in open court, and it appearing to the Court that the decree heretofore entered in this cause on the 28th day of June, 1934, dismissing the amended and cross bills as to depositors of the Park Savings Bank who became such after August 30, 1929, was on appeal affirmed by the United States Court of Appeals for the District of Columbia, and after argument by counsel for the respective parties, it is by the Court this 9th day of December, 1935,

ADJUDGED, ORDERED, and DECREED, that the amended bill of complaint and cross bill filed herein, inso-

far as said bills seek to hold the defendants herein liable to depositors of the defendant bank who were such on August 30, 1929, and continued to be such until the closing of the bank on March 6, 1933, be, and each of said bills is hereby dismissed, with costs to the defendants to be taxed by the clerk.

5 All proceedings heretofore had in connection with the appeals taken by the plaintiffs shall apply to the decree as amended.

ALFRED A. WHEAT
Chief Justice.

From the foregoing decree the plaintiffs and cross plaintiffs in open court note an appeal to the United States Court of Appeals for the District of Columbia, and the security on appeal is fixed at One Hundred Dollars (\$100.00) cost bond or a deposit of Fifty Dollars (\$50.00) in cash.

ALFRED A. WHEAT—
C. J.

6 *Motion for Substitution of Executor of Amandus
F. Jorss, Deceased*

Filed February 21 1939

* * *

Come now the plaintiffs and the cross-plaintiff in the above entitled action, without prejudice to their rights under the substitution effected by the order of June 21, 1937, of the Court of Appeals, as noted hereinbelow, and without prejudice to their rights under the suggestion of death filed in this court January 24, 1939, and the service of process issued thereunder, as noted hereinbelow, and show unto the court as follows:

1. Amandus F. Jorss, one of the original defendants in this action, died on March 15, 1937, and under the will of said decedent, admitted to probate April 15, 1937, letters testamentary were issued as of April 16, 1937, to Karl F. Jorss, as the duly appointed and qualified executor of the estate of Amandus F. Jorss, deceased, as more fully appears in said Probate proceedings No. 51596, in the records of the Office of the Register of Wills for the District of Columbia.

2. When the above entitled action was on appeal before the United States Court of Appeals for the District of Columbia, Docket, No. 6635, a suggestion of death of Amandus F. Jorss, and a motion for the substitution of Karl F. Jorss, the executor, as party appellee in place of Amandus F. Jorss, deceased, were filed in said Court of Appeals June 19, 1937, and the motion for substitution was granted as of June 21, 1937.

3. On January 24, 1939, a suggestion of death was filed in the above entitled action pending in this court advising the court of the death of the defendant, Amandus F. Jorss on March 15, 1937, and the appointment and qualification on April 16, 1937, of Karl F. Jorss, as executor, of the Estate of Amandus F. Jorss. Upon the filing of said suggestion of death a summons was issued therewith and was served upon the said Karl F. Jorss, as executor, on January 28, 1939.

WHEREFORE, the plaintiffs and the cross plaintiff pray that an appropriate order be entered by this court declaring the said Karl F. Jorss, executor, to be a party defendant in this action in the place and stead of Amandus F. Jorss, deceased.

E. HILTON JACKSON
WILLIAM E. RICHARDSON
Attorneys for plaintiff

J. BRUCE KREMER
HERBERT M. BINGHAM
BRUCE A. LOW
H. DONALD KISTLER
*Attorneys for cross-plaintiff,
John F. Moran, Receiver.*

Marshal's Return

Personally served a copy of the within motion on the within named Karl F. Jorss. March 6, 1939.

JOHN B. COLPOYS,
*U. S. Marshal in and for the
D. of C.*

By H. STANLEY COATES O.
Deputy U. S. Marshal
Marshal's Costs \$1.00.

8 *Points and Authorities in Opposition to Motion for Substitution of Executor of Amandus F. Jorss, Deceased.*

Filed March 10, 1939

*

*

*

Comes now, Karl F. Jorss, Executor of the estate of Amandus F. Jorss, deceased, appearing specially for the purpose of this opposition to the motion filed herein, February 21, 1939, to substitute him as a party defendant in the place and stead of Amandus F. Jorss, deceased, and for no other purpose, and for grounds of said opposition says:

1. That Amandus F. Jorss, one of the defendants named in the above entitled cause died on the 15th., day of March, 1937, and on April 16th., 1937, Karl F. Jorss was appointed and qualified as Executor of the estate of said decedent.

2. That prior to the date of the death of the decedent, the defendants in the above entitled cause had filed a motion to dismiss the bill, and on June 28, 1934, a decree granted the motion to dismiss as to those depositors of the Park Savings Bank who opened their accounts after August 30, 1929. From this decree, an appeal was prosecuted by the plaintiff Thompson, and the Receiver of the bank was allowed a special appeal. This appeal was designated as No. 6328, and the only question there presented was as to the rights of depositors who became such after August 30, 1929. The decision of the Court of Appeals, announced April 29, 1935, was favorable to the appellees.

3. Thereafter, the branch of the case having to do with the rights of depositors whose accounts with the Park Savings Bank were opened prior to August 30, 1939, came on for trial in this Court, and after hearing, a decree entered December 9th., 1935, dismissed the bill. From
9 that decree an appeal was prosecuted to the Court of Appeals, there known as No., 6635, and while said appeal was pending and before the same came on for argument, the decedent, Amandus F. Jorss, on the 15th., day of March, 1937, died, and on March 7th., 1938, the Court of Appeals reversed this Court, and remanded the case to this Court, with directions, as follows:

“The case will, therefore, be remanded to the lower Court with instructions to set aside the former decree and refer the case to an Auditor for an accounting to determine which depositors of the bank as of August 30, 1929, continued as such and to determine what part of their deposits as of that day remained in the bank during the ensuing period.”

4. That in the case No., 6635 Court of Appeals, process or summons has never at all or in any manner been served upon the personal representative of decedent's estate to be substituted as a party defendant, nor has he at any time waived service of summons or voluntarily entered his appearance in the Court of Appeals or in this Court, nor has he ever authorized any attorney to appear for him in any manner whatsoever in case No., 6635 in the Court of Appeals.

5. That on June 19th., 1937, in case No., 6635 in the Court of Appeals, a suggestion of death, giving the name of the personal representative of the decedent, and a motion to substitute him as a party was filed by counsel for the appellants, a copy of such motion and suggestion was served upon counsel for the surviving appellees, the personal representative of the decedent's estate did not voluntarily become a party, no service of the suggestion of death and motion for substitution was ever made upon the personal representative or upon any one in his behalf; and no order was obtained requiring him to become a party, as provided by Rule 9 of the Court of Appeals, and no valid order was ever entered substituting the personal representative of decedent's estate.

6. That not until January 28, 1939, had process or
10 summons ever at all, in any manner been served upon the Executor, personal representative of the decedent's estate to be substituted as a party defendant, nor has he at any time waived service of process or summons, or voluntarily entered his appearance in this cause, nor had he ever authorized any attorney to appear for him in this cause, in this Court until January 28, 1939, and then to appear specially only for the purposes set forth in his motion to quash, filed herein February 20, 1939.

7. The decedent, Amandus F. Jorss, died March 15, 1937, while this case was pending in the Court of Appeals, nine

months before the same came on for hearing, and a year before the Court of Appeals rendered its decision.

8. It thus appears that at the time of the death of Amandus F. Jorss, the bill filed in this cause stood as dismissed as to him in this Court, and this Court lost jurisdiction of the person of Amandus F. Jorss, when plaintiffs prosecuted their appeal to the Court of Appeals; and that the personal representative of the decedent was never brought within the jurisdiction of either Court, any order or decree entered by the Court of Appeals attempting to bind a dead man or to bind the personal representative of the deceased, is void.

It is therefore respectfully submitted that the cause of action abated as to him and that the motion to substitute the Executor of Amandus F. Jorss, deceased, as a party defendant should be denied.

HARRY A. L. BARKER

Attorney for the Executor appearing herein specially for the purpose of this opposition and none other.

11

Points and Authorities

The Court never acquired jurisdiction of the personal representative of the decedent; Death of party; Making new party; Abatement.

Rule 9 of the Court of Appeals:

1. Whenever, pending an appeal, dating from the time of the appeal taken in the Court below, either party shall die, the proper representative, in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit at once, or at the next succeeding term after death, and thereupon the cause shall be heard and determined as in other cases; and if such representative shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion in writing, obtain an order that unless such representative shall become parties within 60 days thereafter, the party moving for such order, if appellee, shall be entitled to have the appeal dismissed; and if the party so moving shall be appellant, he shall be entitled to open the record, and, or hear-

ing, have the judgement, decree, or order appealed from reversed, if it be erroneous; *Provided, however*, That a copy of every such order shall be printed and published in some newspaper, of general circulation, published in the District of Columbia for two successive weeks, at least 30 days before the expiration of such period of 60 days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear before the second day of the ensuing term succeeding the suggestion, and no measures are taken by the opposite party within that time to compel an appearance, the appeal shall abate, provided there are parties in being capable of being made parties to the appeal.

In *Wetmore vs Karrick*, 25 App. D. C. 415, affirmed in 205 U. S. 141, and in *Collins vs. McBlair*, 29 App. D. C. 354.

It was held in effect that a proceeding once discontinued formerly or by express operation of law cannot be revived and made effectual in a Court having jurisdiction of the subject-matter, without notice to the party affected thereby. The judgment or order entered without such notice, it was held, is of no force or effect, and its invalidity can therefore be shown in a collateral proceedings.

See *Leonard vs Volger*, No. 3165 in the Court of Appeals.

In *Wetmore vs Karrick*, the Court said:

"It is an elementary doctrine of this Court that a judgment rendered in personam against a defendant without jurisdiction of his person is not only erroneous but void."

In *Galpin vs. Page*, 85 U. S. 350, 368 the Court said:

12 "It is a rule as old as the law, and never to be more respected than now, that no one shall be personally bound until he has had his day in Court, by which is meant until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of judicial determination; It is judicial usurpation and oppression, and never can be upheld where justice is justly administered".

To the same effect, *Roller vs Holly*, 176 U. S. 399, 408.

Clark vs Willis, 203 U. S. 164.

The authority of an attorney to act for his client ceases upon the death of the client:

Levine's Estate, 286 N. Y. S. 513, the Court said:

"It is undoubtedly the law that the authority of an attorney to act for his client ceases upon the death of the client" (Austin vs Monroe 4 Lans, 67, affirmed 47 N. Y. 360; Matter of Dunn 205 N. Y. 398, 403, 98 N. E. 914 Ann. cas. 1913 E. 536) "and the agency is terminated even though no notice of death be given to the attorney." (Meechem, the Law of Agency, Vol. 2-2316p. 1904)

Hunt vs. Rousmanier's 8 Wheaton 589, 596, 598; 5 L. Ed. 170, 198, 207.

13

Affidavit

DISTRICT OF COLUMBIA, ss:

Joseph T. Sherier, being first duly sworn, deposes and says:

He is a member of the Bar of the District of Columbia and one of the attorneys of record for the defendants in the cause of Thompson, et al., vs. Park Savings Bank, et al., Equity No. 55,933 in the District Court of the United States for the District of Columbia, and No. 6635 in the United States Court of Appeals for the District of Columbia; that Amandus F. Jorss was named as one of the defendants and appellees in the above cause, and he is informed said Amandus F. Jorss died on the 15th day of March, 1937, at which time the above cause was pending in the Court of Appeals.

Affiant says that he was never retained to represent Karl F. Jorss, personal representative of the decedent's estate in Equity Cause 55,933 in the District Court, nor in the cause known as No. 6635 in the Court of Appeals; that he did not meet Karl F. Jorss until the month of December, 1938, at which time he was introduced to him in connection with the causes known as Equity No. 57,416 and Equity No. 57,354, pending in the District Court.

JOSEPH T. SHERIER

Subscribed and sworn to before me this 10th day of March, 1939.

MELVILLE B. COX

(Seal)

Notary Public, D. C.

14 *Affidavit in Support of Opposition to Motion for
Substitution of Executor of Amandus F. Jorss, De-
ceased*

*

*

*

DISTRICT OF COLUMBIA, ss:

Karl F. Jorss, being first duly sworn, on oath deposes and says; that on the 16th., day of April, 1937, he was appointed and qualified as executor of the estate of Amandus F. Jorss, deceased, as will appear in administration cause numbered 51,596 in the Probate Court for the District of Columbia.

That up to January 28, 1939, no process or summons had ever been served upon him to be made a party in the cause of Joseph W. Thompson, et al., vs Park Savings Bank, et al., Equity cause numbered 55,933, or in the Court of Appeals numbered 6635, nor has he at any time waived service of process or summons or voluntarily entered his appearance in said Equity cause 55,933, or in the Court of Appeals numbered 6635, nor had he ever authorized or employed any attorney to appear for him in the aforesaid Equity cause 55,933, until January 28th., 1939, and then only to appear specially for the purposes of the motion to quash the scire facias issued January 24th., 1939.

That he never employed Joseph T. Sherier, Esq., or Otis B. Kent, Esq., or any other attorney to represent him in the aforesaid Thompson case in the Court of Appeals, there known as number 6635, and in fact he did not meet Mr. Sherier until sometime in the month of December, 1938, and although he has heard of Otis B. Kent, he has never met him.

KARL F. JORSS

Subscribed and sworn to before me this 10th day of March, 1939.

MARTHA F. FANSLER

(Seal)

Notary Public, D. C.

15 Service of a copy of the within opposition is hereby acknowledged this 10th day of March, 1939.

E. HILTON JACKSON
WM. E. RICHARDSON
Attorneys for Plaintiffs
By C. S.

J. BRUCE KREMER
HERBERT M. BINGHAM
BRUCE A. LOW
H. DONALD KISTLER
Attorneys for Cross-plaintiffs

16 *Order Substituting Karl F. Jorss as Executor, as Party Defendant*

Filed March 15 1939

*

*

*

Upon consideration of the motion of the plaintiffs for the substitution of Karl F. Jorss, as executor of the estate of Amandus F. Jorss, deceased, the opposition thereto and after hearing in open Court by counsel for the respective parties

And it further appearing to the Court that the motion to quash the scire facias issued herein on January 24, 1939, and served upon Karl F. Jorss, executor as aforesaid, was denied by this Court on the 6th day of March, A. D. 1939,

It is this 15th day of March, A. D. 1939,

ORDERED, ADJUDGED and DECREED, that Karl F. Jorss as executor of the estate of Amandus F. Jorss be, and he is hereby substituted as a party defendant in this cause in his representative capacity of the estate of said deceased.

By the Court

JENNINGS BAILEY
Justice

17 *Order Allowing Special Appeal*

Filed June 3 - 1939

United States Court of Appeals for the District of
Columbia

April Term, 1939.

No. 3066 Original.

Equity No. 55,933.

KARL F. JORSS, Executor of the Estate of Amandus F.
JORSS, Deceased, *Petitioner*,

vs.

JOSEPH W. THOMPSON, et al.

On consideration of the Petition for allowance of a Special Appeal from the order of the District Court of the United States for the District of Columbia entered herein on March 15, 1939, by Mr. Justice Jennings Bailey,

It is ordered by the Court that the petition be, and it is hereby, granted and a special appeal allowed as prayed, the case to be set for hearing on the October, 1939, Assignment.

Per Mr. Chief Justice Groner, May 29, 1939.

A True Copy,

Test: JOSEPH W. STEWART

*Clerk, of the United States Court of Appeals for
the District of Columbia*

(Seal)

18 *Notice of Appeal*

Filed Jun 6 1939

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*

*

Notice is hereby given this 6th day of June, 1939, that Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, hereby appeals to the United States Court of Appeals for the District of Columbia from the order of this Court entered on the 6th., day of March, 1939, denying the motion of Karl F. Jorss, filed on the 20th., day of February, 1939, to quash scire facias; and from the order of this

Court entered on the 15th., day of March 1939, substituting Karl F. Jorss as executor of the estate of Amandus F. Jorss, deceased, a party defendant.

HARRY A. L. BARKER

Attorney for Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased.

J. BRUCE KREMER

HERBERT M. BINGHAM

BRUCE A. LOW

H. DONALD KISTLER

Atty for John H. Moran Receiver

E. HILTON JACKSON

WILLIAM E. RICHARDSON

Attorney for plaintiffs.

19

Memorandum

June 6, 1939

Bond (\$250) of K. F. Jorss on appeal—filed.

Statement of Points on Appeal

Filed June 6, 1939

*

*

*

Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, for points relief upon on appeal, says:—

1. The Court erred in entering the order of March 15, 1939, substituting him, Karl F. Jorss as executor of the estate of Amandus F. Jorss, deceased, as a party defendant, he contends the cause abated as to him and the Court was without jurisdiction as to him.

HARRY A. L. BARKER,

attorney for Karl F. Jorss executor of the estate of Amandus F. Jorss, deceased.

Special appeal No. 3066

Designation of Record

Filed June 3, 1939

*

*

*

Comes now Karl F. Jorss, executor of the estate of Amandus F. Jorss, deceased, by Harry A. L. Barker, his attorney and designates the parts of the record which he desires in the transcript of the record, said parts being considered sufficient for the determination of the questions raised in special appeal, namely:

1. Motion for substitution of executor of Amandus F. Jorss, deceased, filed February 21, 1939.

2. Opposition to motion for substitution of executor of Amandus F. Jorss, deceased, filed March 10, 1939.

3. Affidavit of Joseph T. Sherier, filed March 10, 1939.

4. Affidavit of Karl F. Jorss, filed March 10, 1939.

5. Order, Mr. Justice Jennings Bailey substituting Karl F. Jorss as executor of estate of Amandus F. Jorss, deceased, as a party defendant, filed March 15, 1939.

6. Amended decree dismissing Amended Bill and Cross Bill, signed by Mr. Justice Wheat, January 3, 1936.

HARRY A. L. BARKER,

Attorney for Karl F. Jorss, executor of estate of Amandus F. Jorss, deceased.

(Special appeal No. 3066)

Service of copy of the foregoing designation of record hereby acknowledged this 3 day of June, 1939.

E HILTON JACKSON

WM. E. RICHARDSON

. Attorneys for plaintiff

J. BRUCE KREMER

HERBERT M. BINGHAM

BRUCE A. LOW

H. DONALD KISTLER

Attorneys for Cross-

plaintiff, John F. Moran, Receiver.

21 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I. Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 20, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 55933 in Equity, wherein Joseph W. Thompson, et al., are Plaintiffs and Park Savings Bank, Incorporated under the laws of the State of Alabama, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of June, 1939.

(Seal) C. E. STEWART,
Clerk.

Endorsed on Cover: No. 7445 Jorss, Executor &c., Appellant, vs. Thompson et al. United States Court of Appeals for the District of Columbia Filed Jun 20 1939 Joseph W. Stewart, Clerk.

